

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO.1545 of 1992
DATE OF DECISION: July 8, 2013.

Om Parkash

Vs.

M.D. University, Rohtak

**CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN
PARSOON**

1. ***Whether Reporters of local papers may be allowed to see the judgment?***
2. ***To be referred to the Reporters or not?***
3. ***Whether the judgment should be reported in the Digest?***

Present: Shri Sumeet Sangwan, Advocate, for
Shri Harish Rathee, Advocate, for the petitioner.

None for the respondent.

DR.BHARAT BHUSHAN PARSOON, J

In this Civil Writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has sought a writ in the nature of Mandamus or any other writ or orders against the respondent-M.D. University (hereinafter to be referred to as the "respondent-University"), to consider his case for promotion to the post of Assistant with effect from the date, his juniors were promoted, along with other consequential benefits. Direction was also sought against the respondent-University for placing the petitioner at serial No. 261 above Shri Rajbir Singh, in the seniority list, taking into account the date of joining of the petitioner on

the post of Clerk on ad hoc basis.

Claim of the petitioner is that the petitioner was appointed as Clerk on adhoc basis on 25.3.1983 , vide letter (Annexure P-1). His services were regularized on the said post vide order dated 10.11.1983 (Annexure P-2). Taking the wrong date of appointment of the petitioner as a regular clerk i.e 28.11.1983, he was placed at serial No. 330 in the seniority list and for this reason he was not promoted as Assistant. Further claim of the petitioner is that in fact he joined his duties on 26.3.1983 and thus he should have been placed at serial No. 261 in the seniority list. It is averred that the petitioner was wrongly not promoted as Assistant and even his representation (Annexure P-7) for assigning appropriate place in the seniority list, was not considered.

In addition, the petitioner has claimed that the respondent-University violated its own service rules for non-teaching employees. It is also claimed that the petitioner was treated differently though he was similarly situated with other employees, whose services rendered on adhoc basis were counted towards their probation period but the same benefit was denied to the petitioner.

The stand of the respondent-University on the contrary is that no right much less statutory, has been infringed. It has been explained that the petitioner was initially appointed as a Clerk purely on adhoc basis and for a period of six months and that too subject to compliance of certain conditions with effect from 26.3.1983 and had been given extension from time to time. One of the conditions contained in the letter of appointment was that the petitioner has to qualify the written test as well as typing test in English at a speed of 30 words per minute.

On his passing the written test, services of the petitioner were regularized by the University with effect from 22.11.1983 but, he was further required to pass the type test. Later on, when he could not qualify the type test, relaxing this condition, on expiry of two years of his probation period, he was confirmed with effect from 28.11.1985. It is claimed that service rendered by the petitioner on adhoc basis, thus, cannot be counted towards his seniority.

It has also been explained that before preparing the final seniority list, in May 1988 objections were invited from the concerned officials within 10 days of the issue of the circular, with clear stipulation that in absence of any objections raised within the stipulated period, the seniority list will be treated as final and that since the petitioner had not raised any objection, it was finalized thereafter. Qua claim of the petitioner that other non-teaching employees promoted as Assistants were given the benefits of adhoc service in counting their service period, it is clarified that they had been appointed on regular basis without any rider or conditions attached to their appointment, which was not the case of the petitioner, as he was required to qualify the written examination as also the typing test. In short, the University had claimed that the petitioner had correctly been placed in the seniority list according to the Rules of the University. Prayer for dismissal of the petition was made.

Since, there is no representation on behalf of the respondent-University in this petition and the matter is of 1992, instead of adjourning the case for the appearance of the counsel for respondent-University, it is considered appropriate to dispose of the matter after hearing learned counsel for the petitioner.

I have heard learned counsel for the petitioner and perused the documents placed on the record.

In the seniority list issued by the respondent-University name of the petitioner is appearing at serial No. 330, taking the date as 22.11.1983 i.e the date of his regularization. No doubt, pursuant to his appointment on adhoc basis, the petitioner had joined his duties on 26.3.1983 but the said period of service rendered on adhoc basis was not counted towards the period of regularization.

The reason is not far to seek. It is rather revealed that the petitioner was appointed on 25.3.1983 purely on adhoc basis for a period of six months on the post of a clerk and he joined on 26.03.1983 and was required to qualify the prescribed written test as well as typing test in English and further his services were liable to be terminated at any time without any notice.

Accepting these conditions contained in the appointment letter dated 25.3.1983, the petitioner joined his duties on 26.3.1983. Vide letter dated 10.11.1983, services of the petitioner were ordered to be regularized, subject to the fulfillment of certain conditions contained therein which included "Verification of character and antecedents as also production of medical fitness Certification from a competent authority". On the fulfillment of said conditions, services of the petitioner were regularized with effect from 22.11.1983 i.e the date on which the said conditions had been fulfilled by the petitioner.

Notwithstanding regularization of services of the petitioner with effect from 22.12.1983 (as per communication of 25.10.1984), the petitioner was required to pass the type test in English at the speed of 30

words per minutes before being considered for confirmation on completion of probation period of one year which was to be counted with effect from 22.11.1983. Despite the extension of period of probation, the petitioner had failed to qualify the requisite type test from time to time, till the expiry of period of two years of probation and even thereafter.

Showing benevolent mercy, the respondent-University relaxed the condition of passing of typing test and after completion of the extended period of probation of two years, the petitioner was confirmed as a Clerk.

From the factual matrix as discussed earlier, it is clear that passing of the typing test was a condition precedent for regularization. Coupled with character verification and antecedents as also production of medical fitness certificate, without waiting for the passing of requisite typing test, services of the petitioner were regularized vide letter dated 25.10.1984 (Annexure P-3). Since the petitioner was required to qualify the typing test during the period of probation one year, on his failure to do so his services were to be terminated automatically on this ground.

Condition No.3 of letter dated 25.10.1984 (Annexure P-3) is extracted as under:-

“You will, therefore, be on probation for a period of one year in the first instance and the probation will be counted with effect from 22.11.1983. You will, however, have to qualify the type test in English at the speed of 30 words per minutes before you are considered for confirmation on the completion of your probationary period. In the event of your failure to qualify the type test, your services may stand terminated automatically on this ground”.

The University instead of terminating services of the

petitioner for his failure to qualify the typing test, provided him sustenance and support by relaxing the condition of passing of typing test but the petitioner instead of showing his gratitude towards the University has raised his accusing finger at the respondent and that too without any basis.

Stand of the University that the seniority list was prepared on the basis of date of joining of the concerned employees on regular post, and that too after considering the objections from the concerned officials, could not be assailed by the learned counsel for the petitioner.

Thus, it is clear that adhering to the Service Rules, the University had acted fairly and had rather relaxed the condition of passing of the typing test when the petitioner had not been able to qualify the said test even during the extended period of probation of two years. In fact this large hearted approach of the University had attributed towards the retention of the petitioner in service otherwise in terms of (extracted earlier), the petitioner was to be off the job.

As far as counting of adhoc service rendered by the petitioner is concerned, when the petitioner had not been able to qualify the requisite typing test (which was a condition precedent), he was neither eligible to be appointed as a clerk nor was to be retained in service. The period of adhoc service of the petitioner could not be counted towards the probation period. Stand of the petitioner that he has wrongly been placed at serial No. 330 in the seniority list, taking the date of his joining the post of clerk inter-alia on regular basis (i.e after complying with the other requisite conditions), is without any substance. When clerks other than the petitioner, were promoted as Assistants in

terms of their seniority viz-a-viz from the date of joining regular service, they cannot be considered juniors to the petitioner.

Looking from another angle, the petitioner was regularized on the post of a clerk vide letter dated 25.10.1984 with effect from 22.11.1983 ignoring the service rendered by him on adhoc basis and only after counting the regular service rendered by the petitioner, he was confirmed as a clerk with effect from 28.11.1985 vide communication dated 22.3.1986. He, however filed the present writ petition only on 26.1.1992. Thus, there is long delay in filing the petition revealing that the petitioner had been in long slumber.

Consequently, when the petitioner has not been able to show violation of any Service Rules and when his appointment was on adhoc basis, dehors the Rules and was subject to the condition of qualifying the written examination as also of passing of requisite type test in English, the respondent University was right in excluding the period of adhoc service for determination of the seniority. It was also so held in **2001(3) RSJ 15 (SC)- State of Punjab and others Vs. Gurdeep Kumar Uppal and others; 2000(4) RSJ 167 (SC)- State of Haryana Vs. Haryana Veterinary and A.H.T.S. Asson and another and Civil Appeal No. 5947 of 2012 (arising out of SLP © No. 29274 of 2009) State of Haryana and others Vs. Vijay Singh and others.**

As a result of above discussion the writ petition is without any merit and is dismissed.

July 8, 2013
Malik

(DR.BHARAT BHUSHAN PARSOON)
JUDGE